

REMARKS

Claims 1-10 and 12-20 are pending and stand rejected under 35 U.S.C. 102(b) as being anticipated by Snow (U.S. 5,797,933). In response to this rejection, the Applicant respectfully submits the following remarks.

The Pending Claims and an Example Embodiment

The Applicant's invention that is the subject of the pending claims is directed to a medical device that includes a clip that can be used, for example, to compress tissue such as at a target ulcer or lesion within a patient's gastrointestinal (GI) tract. The clip is initially coupled to an end of an endoscope, which can be a typical endoscope as is used by GI physicians in viewing the various portions of the GI tract (e.g., esophagus, stomach, intestines, colon). In use of an embodiment of the invention, the clip is coupled to the endoscope and the endoscope is manipulated by the physician such that it is positioned near the wound site. When the target tissue is reached, the clip is deployed from the endoscope, thus compressing the tissue at the wound site to create the desired mechanical compression. In an example procedure, the clip is not intended to be a permanent implant. Instead, it is intended to remain in place until permanent healing is attained, which may be a period of between 48 hours to two weeks. The clip in this example is intended to slough off over time due to the tissue that is compressed within the surgical clip dying from the loss of blood supply to the tissue and/or a slow cutting action applied by the surgical clip itself to the tissue. After sloughing off, the surgical clip is passed as part of the patient's normal digestion. (See specification, paras. 128-132).

The present claims include five independent claims – claims 1, 2, 7, 10 and 15. Each of these claims recites a device adapted to be used with tissue, the device comprising: "an endoscope having a distal end," and "a clip, the clip coupled to the endoscope," the clip comprising: "a ring" or "ring portion;" "a plurality of legs" attached to the ring or ring portion, with "each of the legs being movable between an open position and a closed position to compress [the body] tissue;" and "a locking mechanism to restrict movement of each of the legs from the closed to the open position."

An example of Applicant's invention is illustrated in FIGS. 54 and 59, reproduced below:

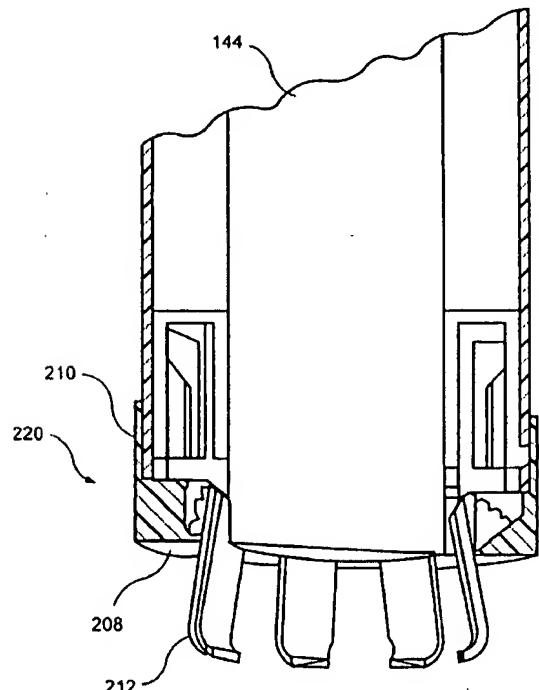


FIG. 54

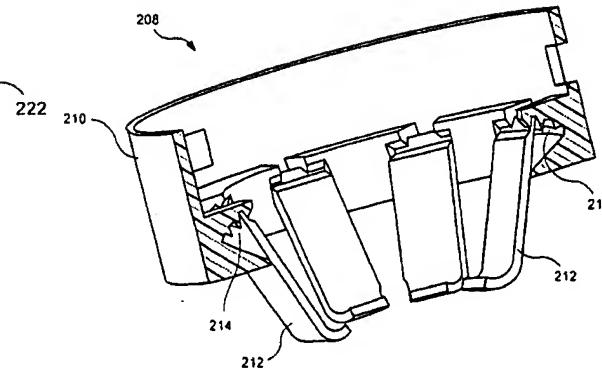


FIG. 49

These figures illustrate an exemplary embodiment of a clip 208 and associated delivery device 220 mounted on an endoscope 144. In this illustrated example, the clip 208 includes a ring portion 210 and multiple legs 212. The ring portion 210 which can fit around the outer diameter of the endoscope 144, and the clip 208 can be deployed from the endoscope 144 at the target tissue site. Before deployment, the legs 212 are in an open position. During deployment, the legs 212 are moved to a closed position to compress the tissue. A locking mechanism, which in this example is ratcheting mechanism 214, can be used to control the position of the legs 212 relative to ring portion 210. The ratcheting mechanism 214 can allow legs 212 to move freely from the open to the closed position, but not in the opposite direction. (Specification, para. 176).

The Snow Reference

The Applicant respectfully submits that the claimed invention is not anticipated by Snow. Snow is directed to a device that can be used, for example, for joining a bypass graft to a patient's artery. The device includes a staple device that includes an anchor member 101 that gets stapled to the patient's blood vessel. In Figures 1-5, cited in the Office Action, Snow discloses "an instrument 118." The instrument 118 "consists of three separate, but interacting, mechanisms: a stapling mechanism 119, a vessel punch mechanism 120, and a graft insertion tool 121, 122." In deploying the anchor member 101, the instrument 118 deforms the legs 105 of the anchor member from the position shown in FIG. 5B to the position shown in FIG. 5C, thereby stapling the anchor member 101 to the vessel.

The Applicant respectfully points out that the medical procedure conducted in Snow is a procedure that is entirely different from the procedures for which Applicant's claimed invention is used. Stemming from these differences, there are a number of differences between the Applicant's claims and Snow. For example, the Snow procedure is not and cannot be performed endoscopically, and "instrument 118" is not an endoscope. Moreover, the legs 105 of the Snow anchor member are simply deformed like a staple, and the Snow device does not include any locking mechanism for restricting movement of the legs from the closed to the open position.

Accordingly, the Applicant respectfully submits that Snow does not disclose at least the following elements recited in each of claims 1, 2, 7, 10 and 15 – "an endoscope having a distal end," "a clip "coupled to the endoscope," and "a locking mechanism to restrict movement of each of the legs from the closed to the open position." For at least these reasons, all of the independent claims, and the claims that depend therefrom, are patentable over Snow.

Without limitation, and by way of example only, the following additional features are not met by Snow – "wherein the locking mechanism is a ratchet mechanism" (claim 2), "wherein the ratchet mechanism comprises a plurality of snaps formed on one of the legs and the ring portion" (claim 3), "wherein the locking mechanism is in physical communication with the ring portion at least when the legs are in an open position" (claim 4), "wherein the hinge is a pin and slot hinge, the pin extending from one of the ring portion and each of the legs" (claim 6), "a catch to mechanically retain the legs in the open position" (claim 7), "wherein the hinge is a four bar mechanism" (claim 8), "resilient devices adapted to urge the legs in one of the open and closed

positions" (claim 9), "wherein the actuator mechanism comprises strings pulling each of the legs in the closed position" (claim 10), "an actuator mechanism including a rack and pinion arrangement" (claim 12), "an actuator mechanism including a hydraulic piston exerting a force on each of the legs" (claim 13), "a releasable attachment connecting the ring to the endoscope" (claim 15), "wherein the releasable attachment comprises a thread forming a stitch between the ring and the endoscope" (claim 16), "wherein the releasable attachment comprises a seal connecting the ring to the endoscope, and a thread embedded in the seal, such that removal of the thread cuts the seal" (claim 17), "wherein the releasable attachment comprises a protrusion extending from one of the ring and the endoscope and a complementary groove formed in the other of the ring and the endoscope, wherein the protrusion and the groove are connected frictionally" (claim 18), "wherein the releasable attachment comprises a catch extending from one of the ring and the endoscope, a complementary slot formed in the other of the ring and the endoscope, and an actuator for releasing the catch from the groove to release the ring" (claim 19), and "wherein the plurality of legs are releasably attached to the ring" (claim 20). The Applicant thus respectfully submits that these claims are patentable over Snow for the additional reason that Snow does not meet these limitations.

Applicant's Information Disclosure Statements & Co-Pending Application

The Applicant submitted an Information Disclosure Statement with the initial filing of this application on September 12, 2003. The Applicant submitted another Information Disclosure Statement, including the references listed from the earlier Information Disclosure Statement, on February 22, 2006. To date, the Applicant has not received acknowledgement of the Examiner's consideration of the references cited. The Applicant respectfully requests such acknowledgement. To insure that such references are listed on the front of any patent to be issued, the Applicant is again listing those references, and others, in an Information Disclosure Statement accompanying this Amendment.

The Applicant would also like to direct the Examiner's attention to co-pending U.S. Patent Application 11/046,747, which claims priority to the same parent application as this application. An Office Action dated August 23, 2007, has issued in that application, to which the Examiner's attention is directed. The claims in this application are believed to be patentable

over the references cited in that application, and those references are listed in the Information Disclosure Statement accompanying this Amendment.

Conclusion

For the foregoing reasons, reconsideration of this application and passage to issuance is respectfully requested. The Commissioner is authorized to charge any fees or credit any overpayments which may be incurred in connection with this paper under 37 C.F.R. §§ 1.16 or 1.17 to Deposit Account No. 11-0600.

Respectfully submitted,

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Douglas E. Ringel

Reg. No. 34,416

KENYON & KENYON LLP
1500 K Street, N.W.
Washington, D.C. 20005
Tel: (202) 220-4200
Fax: (202) 220-4201